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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION No. 2461 OF 2002

PETITIONER: Miss.Nazmunnissa, D/O. Late Shri Shaikh Mohamad Yakub, Aged About 52 Years, Lecturer, Covernment Higher Secondary School, Mainpur, Distt. Raipur (CHHATTISGARH).

VERSUS

RESPONDENTS:

1. State Of Chhattisgarh, Through: Principal Secretary, Government of Chhattisgarh, Department of Tribal Welfare D.K.S.Bhawan Mantralaya, Raipur CHHATTISGARH

2. Assistant Commissioner, Tribal Welfare Department, Collectorate, Raipur CHHATTISGARH

P.R. No. ..... Presented by Shri ..... dated .....

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUION OF INDIA

On behalf of the petitioner it is respectfully submitted as under:-

1. **PARTICULARS OF THE PETITIONER**

As mentioned above in the cause title of the petition.

2. **PARTICULARS OF THE RESPONDENTS**

As mentioned above in the cause title of the petition.

3 **PARTICULARS OF THE ORDER AGAINST WHICH PETITION IS BEING MADE:**

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2461 **सन्** 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

03.10.2006

No one appears on behalf of the petitioner when the matter is called out.

Shri Sandeep Yadav, Dy. Government Advocate for the State/respondents.

Arguments heard.

Order dictated as follows:

ORAL ORDER
(03.10.2006)

By way of this writ petition, filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of her transfer order dated 11.9.2002, by which she has been transferred from Government Girls Higher Secondary School, Gariyaband to Jagdalpur (Annexure P-1).

The case of the petitioner, as stated in the writ petition, is that the petitioner and her sister namely- Smt. Kamrunnisa Qureshi have some family property at Gariyaband regarding which, there is some dispute pending since the year 1999-2000. This dispute is with the members of Muslim Jamat at Gariyaband, who says that the petitioner has encroached upon 25 x 2 feet of land belonging to Jama Maszid, Gariyaband. It is also stated that the petitioner and her sister take care of the family property and a civil suit is also pending in the civil court at Gariyaband. This suit has been instituted, as the dispute created by the Muslim Jamat

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मामला क्रमांक ...W.P.2461... **सन् 2002**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

could not be resolved otherwise. The main contention of the petitioner in the writ petition is that the members of Muslim Jamat, who have an eye on the property of the petitioner, have given a complaint to the Chief Minister through the member of Legislative Assembly, wherein it is learnt to have been stated that if the petitioner and her sister are not removed from Gariyaband and Mainpur, respectively, then there is a likelihood of breaking out of communal riot. It is contented that on such a complaint only, the petitioner has been removed from her said place of posting and the aforesaid action of the State amounts to malafide against the petitioner.

A perusal of the record would show that no such copy of the complaint or any such instruction from the office of the Chief Minister has been brought on record by the petitioner and the pleadings in this regard are also vague. It is worth mentioning that neither the members of the Legislative Assembly nor the Chief Minister or his officer bearer have been added as a party to substantiate the claim of malafide against them.

The apex while dealing with the matter of ***Kendriya Vidya Sanghatan Vs. Damodar Prasad Pandey*** reported in ***2004 AIR SCW Pg.5563*** referring to the various decisions has observed vide para 4 as follows :

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(*See Ambani Kanta Raj Vs. State of Orrisa, 1995 (Suppl) 4 SCC 169*). Unless the order of transfer is vitiated by malafide or is made in violation of operative guidelines, the Court cannot interfere with it. (*See Union of India Vs. S.L.Abbas, AIR 1993 SC 2444*). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In *Union of India & others Vs. Janardan Debanath & anr. (2004) 4 SCC 245* it was observed as follows:

> "No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574".

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is noteworthy that for quashing of the impugned order dated 11.9.2002, this writ petition was filed on 14.11.2002 and no stay etc. were granted by this Court and since the counsel for the petitioner is also not here, it may be presumed that the order must have been complied with by now.

In light of the averments made in the writ petition and also in light of the various decisions referred to above and further in the facts and circumstances of the case, I do not find any reason to interfere with the transfer order of the petitioner at this stage, which was passed as back as in the year 2002.

The petition has no merit and the same is dismissed accordingly.

Sd/-
Sunil Kumar Sinha
Judge

Anita